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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/945,339	08/31/2001	Edmund K. Waller	05010.0087U1	1418

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EXAMINER

BELYAVSKYI, MICHAIL A

ART UNIT

PAPER NUMBER

1644

DATE MAILED: 04/09/2003

15

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/945,339	WALLER ET AL.
	Examiner	Art Unit
	Michail A Belyavskyi	1644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 20 February 2003.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-58 is/are pending in the application.

4a) Of the above claim(s) 7-14 and 21-58 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-6 and 15-20 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.

4) Interview Summary (PTO-413) Paper No(s). _____.

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____.

RESPONSE TO APPLICANT'S AMENDMENT

1. Claims 1-58 are pending.

Claims 7-14 and 21-58 stand withdrawn from further consideration by the Examiner, 37 C.F.R. § 1.142(b) as being drawn to a nonelected invention.

Claims 1-6 and 15-20 are under consideration in the instant application.

In view of Applicant's arguments, filed 2/20/03 (Paper NO: 13) the following rejection remains:

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1-6 and 15 –20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Waller (US Patent 5,800,539) in view of Sykes et al. (WO 99/25367) essentially for the same reasons set forth in the previous Office Action, Paper No: 11, mailed 11/18/02.

Applicant's arguments, filed 2/20/03 (Paper No. 13), have been fully considered, but have not been found convincing.

Applicant asserts that while Sykes et al., may indicate that the presence of T is desirable, Sykes et al., does not indicate or suggest that T cells retain their ability to proliferate in the recipient.

Contrary to Applicant assertion, Sykes et al., teach a method of a myeloreductive non-myeloablative treatment with fludarabine, the same type of treatment as claimed invention. Sykes et al., teach that for successful transplantation of hematopoietic cells from donor to recipient, it is essential that after treatment T cells are not completely depleted, thus so called graft-versus leukemia (GvL) effects of the non-depleted T cells help engraftment of donor hematopoietic cells (see page 10, lines 17-23, page 11, line 5-25 in particular). Sykes et al., specifically stressed that said treatment should not completely eliminated T cells (page 16, lines 2-11 in particular).

It is clear that both the prior art and applicant administer the same treatment to achieve the same results. Therefore it would be obvious to one of ordinary skill in the art at the time the invention was made to conclude that this myeloreductive non-myeloablative treatment with fludarabine would produce T cells that retain their ability to proliferate in the recipient. When the prior art method is the same as a method described in the specification, it can be assumed the method will obviously perform the claimed process absent a showing of unobvious property.

4. No claim allowed

5. **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michail Belyavskyi whose telephone number is (703) 308-4232. The examiner can normally be reached Monday through Friday from 9:00 AM to 5:30 PM. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on (703) 308-3973. Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 1600 receptionist whose telephone number is (703) 308-0196.

Papers related to this application may be submitted to Technology Center 1600 by facsimile transmission. Papers should be faxed to Technology Center 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CM1 Fax Center telephone number is (703) 305-3014.

Michail Belyavskyi, Ph.D.
Patent Examiner
Technology Center 1600
April 7, 2003

Christina Chan
CHRISTINA CHAN
SUPERVISORY PATENT EXAMINER
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